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REGULATORY AUTH.

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OFFICE OF THE
EXECUTIVE SECRETARY
April 4, 2002

Guy M. Hicks
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VIA HAND DELIVERY

David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Complaint of XO Tennessee, Inc. Against BellSouth Telecommunications, Inc.*

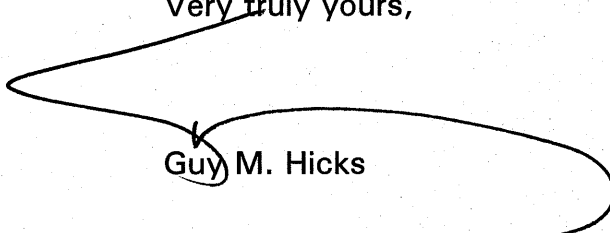
Complaint of Access Integrated Networks, Inc. Against BellSouth Telecommunications, Inc.

Docket No. 01-00868

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth's Opposition to Motion to Submit Supplemental Authority. Copies of the enclosed are being provided to counsel of record.

Very truly yours,


Guy M. Hicks

GMH:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

Re: *Complaint of XO Tennessee, Inc. Against BellSouth Telecommunications, Inc.*

Complaint of Access Integrated Networks, Inc. Against BellSouth Telecommunications, Inc.

Docket No. 01-00868

BELLSOUTH TELECOMMUNICATIONS, INC.'S OPPOSITION
MOTION TO SUBMIT SUPPLEMENTAL AUTHORITY

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits this Opposition to the Motion to Submit Supplemental Authority that was filed by XO Tennessee, Inc., Access Integrated Network, Inc., and ITC^DeltaCom ("the CLEC parties") on or about April 1, 2002.

The "authority" the CLEC parties wish to submit is an Order of the Washington Utilities and Transportation Commission that simply *approves a settlement agreement* that amicably resolved allegations of violations of a Washington statute by Qwest Corporation.¹ The Order, however, makes it clear that the Washington Commission itself would not consider the Order to be "authority" that creates any sort of precedent:

In accepting and adopting this settlement, the Commission finds that the result is consistent with the public interest and that it saves time, effort and expense for the Commission, the company, and the

¹ See Commission Staff's Motion to Amend Complaint at ¶4. The CLEC parties attached a copy of this pleading to their Motion "[a]s further background concerning the Washington case." See Motion at 1 n.2.

intervenors. Acceptance of this settlement, however, is done *without the detailed examination and the close study of partisan arguments on contested issues that produces informed decisions on each litigated issue*. The Commission therefore observes, consistent with similar observations in other proceedings, *that this Order does not constitute a ruling on any underlying issue that might have been litigated*.

See Order at ¶10 (emphasis added). For the CLEC parties to ask the Hearing Officer to accept as "authority" an Order that by its own terms "does not constitute a ruling on *any* underlying issue that might have been litigated" is simply inappropriate.

Nor does anything in the materials attached to the CLEC parties' Motion suggest any "similarity of the Washington case to the above-captioned proceeding" See Motion at 1. As explained more thoroughly in BellSouth's post-hearing brief, the entire cost of Select program points is borne by the non-regulated lines of business, and there is neither a reduction of the regulated revenues nor a discount to tariff rates. Nothing in the materials submitted by the CLEC parties suggest that any credits or rewards that were the subject of the Washington Commission's Order were borne by the unregulated operations of Qwest. To the contrary, the following allegations in the First Amended Complaint that are addressed by that Order suggest that the rewards or credits were funded entirely by the regulated operations of Qwest:

Before or during October 1999, Qwest developed a Centrex Customer Loyalty Program (CCLP) under which certain customers of Qwest's Centrex Primo, Centrex Plus, Centron, and Centron XL (Centrex) services would receive a service credit.

See First Amended Complaint at ¶10.² Accordingly, even if the materials the CLEC parties seek to submit were "authority" (and they are not), the CLEC parties have failed to demonstrate that the Qwest Centrex Customer Loyalty Program addressed by those materials is remotely similar to the Select Business Program that is the subject of this docket.

For the foregoing reasons, the Hearing Officer should deny the CLEC parties' Motion to Submit Supplemental Authority.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: 

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² The CLEC parties attached a copy of this pleading to their Motion "[a]s further background concerning the Washington case." See Motion at 1 n.2.

CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2002, a copy of the foregoing document was served on the parties of record, via the method indicated:

☐ Hand
☐ Mail
☐ Facsimile
☐ Overnight
☒ Electronic

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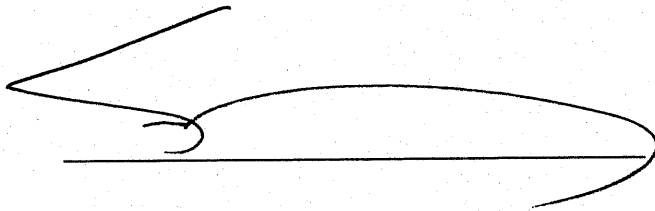
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A large, stylized handwritten signature in black ink, consisting of a long horizontal stroke with a large loop at the end and a smaller loop at the beginning.